THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/B) No. 230 of 2006

1. Smt. Donita, W/O Sri Rajenra Singh, R/O Behind the District Court Bhotiaparao, Haldwani, District Nainital.
2. Smtm. Sunita Jaiswal W/O Sri Dushyant Jaiswal, R/O New Line Ramnagar, District Nainital.
3. Smt. Jitendra Kaur W/O Sri Gurdeep Singh, R/O Near Mayut Hotle, Bhotiaparaw, Haldwani, District Nainital.
4. Rajendra Singh, S/O Sri Kulwant Singh, R/O Behind the District Court, Bhotiaparaw, Haldwani, District Nainital.

… **Petitioners.**

Versus

1. State of Uttaranchal, through Secretary Industrial Development, Civil Secretariat, Dehradun.
2. District Magistrate, District Bageshwar.

… **Respondents.**

Sri Parash Tripathi, Adv., learned counsel for petitioners.
Sri K.P. Upadhyay, Learned Standing Counsel for the State-respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date August 24, 2006.

Heard learned counsel for the rival parties and perused the entire material on record.

This writ petition has been filed by the petitioners for issue a writ order or direction in the nature of certiorari quashing the impugned order dated 22-02-2006 passed by respondent no. 1 as contained in Annexure No.1 to the writ petition, by which the application of the petitioners for grant prospecting licence has been rejected on the ground that there had been delay of one day in filing the documents before the respondent no.2.

Learned counsel for the petitioners submits that one day delay occurred on account of the fact that the petitioners had to submit certified copy of Khatauni along with the application for grant of prospective licence. The authorized agent of the petitioners

Pratap Singh Mer applied for certified copy of Khatanui before the Registrar Kanungo Tahsil Bageshwar, but it was not supplied to the petitioners' agent till 7th January, 2006. Accordingly, the petitioners deposited the Khatauni the same day, i.e. on 7.1.2006, at Dehradun before the respondent no. 1, therefore, the delay was not on the part of the petitioners. It was due to non-availability of the certified copy of Khatauni, for which the applicants/petitioners had applied much earlier.

The rejection of the application on the ground of one day delay is very highly technical. The petitioners had applied for certified copy of Khatauni before the Registrar Kanungo Tahsil Bageshwar and despite their application for copy, the same could not be issued by the Registrar Kanungo, because of non-supply of electricity on 5th and 6th January, 2006. There is no denial of these facts in the counter affidavit filed by the respondent no.1, sworn in by the Secretary of the respondent no.1-State that such a copy was not applied for by the petitioners before the expiry of one month period. It was also not denied that there was electric failure on 5th and 6th January. Therefore, the reason for delay of one day is bona fide and cannot be attributed to the petitioners. Thus, one-day delay is condoned. Accordingly, the order, under challenge, dated 22-2-2006 **(*Annexure No.1*** to the writ petition) is liable to be set aside. The writ petition succeeds.

The writ petition is allowed. The impugned order dated 22-2-2006 passed by the respondent no.1 is set aside. The respondents are directed to process the application of the petitioners in accordance with law for grant of prospecting licence. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP